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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14
15 **BARRY SIMON JAMESON,**

Petitioner,

16
17 v.

18 **JAMES A. YATES, Warden,**

19 Respondent.
20

C07-03160 SBA

**NOTICE OF MOTION AND
MOTION TO DISMISS;
MEMORANDUM OF POINTS
AND AUTHORITIES**

21 TO PETITIONER BARRY S. JAMESON, IN PRO PER:

22 Respondent James A. Yates, Warden of Pleasant Valley State Prison where Petitioner is
23 currently incarcerated, moves to dismiss the habeas corpus petition under Rule 4 Governing §
24 2254 Cases in the United States District Courts on the ground that Petitioner has failed to exhaust
25 his state court remedies as to his claims. This motion is based on the notice and motion,
26 supporting memorandum of points and authorities, the pleadings, records, and files in this case.

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Not. of Mot. & Mot. to Dismiss

Jameson v. Yates
C07-03160 SBA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Petitioner is a California inmate serving an indeterminate life sentence for second-degree
 4 murder. (Pet. at 1b.) Petitioner alleges that he is unlawfully held in prison because he has
 5 surpassed his maximum release date. (*See* Pet. *generally*.) Respondent moves to dismiss the
 6 petition because there is no evidence Petitioner exhausted his state court remedies before
 7 bringing his claims to this Court.

8 **ARGUMENT**

9 **THE PETITION SHOULD BE DISMISSED BECAUSE PETITIONER**
 10 **HAS NOT SHOWN THAT HE EXHAUSTED HIS STATE COURT**
REMEDIES AS TO HIS CLAIMS.

11 The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) states that a petition
 12 for habeas corpus on behalf of a person in custody pursuant to the judgment of a state court
 13 cannot be granted unless the prisoner has exhausted the remedies available in the state courts. 28
 14 U.S.C. § 2254(b)(1)(A); *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999) (state inmate must
 15 give the state courts an opportunity to act on his claim before federal court may consider granting
 16 habeas corpus relief). The Supreme Court has stated that § 2254(b) "provides a simple and clear
 17 instruction to potential litigants: before you bring any claims to federal courts, be sure that you
 18 first have taken each one to state court." *Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001)
 19 (citing *Rose v. Lundy*, 455 U.S. 509, 520 (1982)). Thus, the California Supreme Court must have
 20 been given at least one opportunity to review each of Petitioner's federal habeas claims. *Larche*
 21 *v. Simons*, 53 F.3d 1068, 1071 (9th Cir. 1995).

22 The law requiring exhaustion in state courts prior to filing for relief in federal court is
 23 primarily grounded in the "respect which the federal courts have for the state judicial processes
 24 and upon the administrative necessities of the federal judiciary." *Wade v. Mayo*, 334 U.S. 672,
 25 679 (1948). The exhaustion requirement doctrine is designed to protect the state court's role in
 26 the enforcement of federal law. *Rose*, 455 U.S. at 518. Thus, if one or more claims in the federal
 27 petition have not been exhausted, the district court must dismiss the petition. *Rose*, 455 U.S. at
 28 522.

1 Here, there is no evidence Petitioner exhausted his state court remedies as to the claims he
2 now presents to the Court. The only state court filings referenced in his petition appear to relate
3 to his criminal conviction. (See Pet. at 4-5.) Petitioner bears the burden of proving that he has
4 exhausted his state remedies prior to filing his federal petition. *Darr v. Burford*, 339 U.S. 200,
5 218-19 (1950). Because Petitioner has not satisfied his burden, there is no evidence that he gave
6 the California Supreme Court an opportunity to dispose of this claim on the merits. *Larche*, 53
7 F.3d at 1071. Therefore, Petitioner's habeas petition must be dismissed. 28 U.S.C. §
8 2254(b)(1)(A); *Rose*, 455 U.S. at 522.

9 **CONCLUSION**

10 The Court should dismiss the habeas petition because Petitioner has not met his burden of
11 demonstrating exhaustion of his state court remedies as to his claims.

12 Dated: October 30, 2007

13 Respectfully submitted,

14 EDMUND G. BROWN JR.
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Jameson v. Yates**

Case No.: **C07-03160 SBA**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 31, 2007, I served the attached

NOTICE OF MOTION AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Barry S. Jameson
C-88511
Pleasant Valley State Prison
Post Office Box 8502
Coalinga, CA 93210-8502
in pro per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **October 31, 2007**, at San Francisco, California.

M. Xiang

Declarant



Signature